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Supreme Court of the United States

OCTOBER TERM, 1937.

Nos. 773-774-775.

AETNA INSURANCE COMPANY,

Petitioner,

—against—

UNITED FRUIT COMPANY,

Respondent.

UNION MARINE & GENERAL INSURANCE COMPANY, LTD., formerly Union Marine Insurance Company, Ltd.,

Petitioner,

—against—

UNITED FRUIT COMPANY,

Respondent.

BOSTON INSURANCE COMPANY,

Petitioner,

—against—

UNITED FRUIT COMPANY,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

We file this reply brief for the purpose of calling the Court's attention to several statements in the brief filed by the respondent, which are either contrary to the record or wholly unsupported by the record.

I.

On page 4 of its brief, respondent takes the position that the greater part of the English P. P. I. insurance covered interests other than the value of the "Almirante". The footnote on page 6 is to the same effect. These statements are directly contrary to respondent's answers, which state that all of this insurance was "upon the SS. 'Almirante' for increased valuation" (see p. 3 of the Petition).

II.

On page 8 of its brief, the respondent makes the following extraordinary statements:

> "All of the cases referred to by the petitioners are *partial loss cases.* The law of those cases is not affected by this decision, which is carefully confined to cases of *total loss* where the recovery is in excess of the agreed valuation."

Both of these statements are clearly and demonstrably erroneous. The cases on which petitioners primarily rely are *North of England Insurance Association* v. *Armstrong* (1870), L. R. 5 Q. B. 244, and *The Livingstone,* 130 Fed. Rep. 746. Both of these were cases of total loss.

The statement that the decision below is carefully confined to cases "where the recovery is in excess of the agreed valuation", is equally erroneous, as clearly appears from a reading of the opinion of the Circuit Court of Appeals. Perhaps the most conclusive evidence on this point is that court's disapproval of *The St. Johns* (101 Fed. Rep. 469), and the *Arm-*

strong case, *supra,* in both of which the recovery was much less than the agreed valuation in the policies. The plain fact is that the opinion below will apply to all cases where the actual value of the vessel is greater than the value fixed in the policies. This means that the decision will apply in practically every case; for the respondent's own answers show that it followed the customary practice in the present case, where it undervalued the vessel in the hull policies and supplemented them with P. P. I. insurance against total loss only (see p. 32 of Brief attached to Petition).

III.

The argument that the policies under which the "Almirante" was insured are now "obsolete" is wholly without support in the record and is not correct. So far as concerns the only point raised in the petition (namely, the effect of the valuation clause), hull policies are just the same today as they were in 1870 when the Queens Bench decided the *Armstrong* case, *supra,* and in 1884, when this Court decided the case of *Mobile and Montgomery R. Co.* v. *Jurey,* 111 U. S. 584.

Dated, March 2, 1938.

Respectfully submitted,

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